96-45

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
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In the Matter of	)
	)
SIOUX VALLEY TELEPHONE COMPANY and	) File No.
HILLS TELEPHONE COMPANY, INC.	)
	)
Petition for Waiver of the Definition of "Study Area" Contained	)
in Part 36, Appendix--Glossary of the Commission's Rules	)

TO: Chief, Wireline Competition Bureau

SUPPLEMENT TO
JOINT PETITION FOR STUDY AREA WAIVER

Sioux Valley Telephone Company ("Sioux Valley") and Hills Telephone Company, Inc. ("Hills") hereby supplement their April 5, 2004 "Joint Petition for Study Area Waiver" to request a waiver of the definition of "average schedule company" in Section 69.605(c) of the Commission's Rules, if such waiver is necessary with respect to the proposed purchase by Hills of the assets of the Valley Springs and North Larchwood, South Dakota exchanges and the East Valley Springs, Minnesota exchange (approximately 557 aggregate access lines) from Sioux Valley.

Background

Sioux Valley is a rural telephone company and incumbent local exchange carrier that presently serves eight local exchanges (approximately 5,912 access lines) in its existing South Dakota study area. Sioux Valley is a rate-of-return carrier that operates its existing study area on an average schedule basis. After completion of the proposed transaction, Sioux Valley will serve five local exchanges (approximately 5,355 access lines) in its South Dakota study area, and will continue to serve this study area on an average schedule basis.

Hills is a Minnesota corporation that is not under common ownership or control with Sioux Valley. Hills is a rural telephone company and incumbent local exchange carrier that presently

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serves three local exchanges (approximately 631 access lines) in its existing Minnesota study area and seven local exchanges (approximately 2,123 access lines) in its existing Iowa study area. Hills is a rate-of-return carrier that operates both of its existing study areas on an average schedule basis. Hills does not currently have its own South Dakota study area, but proposes to establish one when it receives the requested study area waiver and obtains the Valley Springs, East Valley Springs and North Larchwood exchanges from Sioux Valley. Hills desires to operate its proposed new South Dakota study area on an average schedule basis.

Average Schedule Waiver

Section 69.605(c) defines an "average schedule company" as a telephone company that was participating in average settlements on December 1, 1982. 47 C.F.R. §69.605(c). This definition "grandfathers" existing average schedule companies as of December 1, 1982, but precludes the creation of new average schedule companies or the conversion of cost companies to average schedule companies after that date without a waiver from the Commission. See Wilderness Valley Telephone Company, 13 FCC Rcd 4511 (1998).

The Section 69.605(c) definition and waiver requirements focus upon **new** average schedule companies, and do not appear to address or apply to **existing** average schedule companies that grow or contract via the addition or subtraction of subscribers, exchanges and/or study areas. In GTE Midwest Incorporated and Winnebago Cooperative Telephone Association, 9 FCC Rcd 7789 (1994), the Commission permitted Winnebago Cooperative Telephone Association ("Winnebago"), an Iowa average schedule company serving fifteen pre-existing exchanges (approximately 5,700 access lines), to acquire a single Iowa price cap exchange (approximately 600 access lines) from GTE Midwest Incorporated and to consolidate that exchange into Winnebago's existing Iowa study area and corporate structure without a waiver of the Section 69.605(c) definition. GTE and Winnebago sought and obtained study area and price cap waivers in connection with the exchange sale, but do not appear to have requested (or the Commission to have required) an average schedule waiver. The Commission's order granting the study area and price cap waivers expressly noted that Winnebago (including the acquired exchange) would continue to be regulated as an average schedule company after the transaction. Likewise, in Farmers Mutual Telephone Company, 11 FCC Rcd 9380 (1996), the Commission permitted Farmers Mutual Telephone Company ("Farmers"), an Idaho average schedule company serving approximately 2,500 access lines, to acquire a single Idaho price cap exchange (approximately 176 access lines) from US West Communications, Inc., and to incorporate the new exchange into its existing Idaho study area and corporate structure without a waiver of the Section 69.605(c) definition. Again, the Commission order granting the study area and price cap waivers clearly indicated that Farmers (including the new exchange) would continue to operate as an average schedule company.

In the present case, Hills is already an "average schedule company" under the Section 69.605(c) definition just like Winnebago and Farmers, and is not seeking to establish a new average schedule company or to convert a cost or price cap entity to average schedule status. Moreover, it is not acquiring cost exchanges or price cap exchanges and seeking to convert them to average schedule status, but rather is acquiring three exchanges that are presently being operated on an average schedule basis by Sioux Valley. The only "difference" is that Hills is not adding the three exchanges to its existing Minnesota study area or to its existing Iowa study area, but instead is seeking a waiver to remove them from Sioux Valley's existing South Dakota study area and to place them into a new Hills' South Dakota study area. This latter difference does not appear to distinguish the present case from the Winnebago and Farmers orders. Hence, Hills, an existing average schedule company, does not appear to need a waiver of the Section 69.605(c) definition of "average schedule company" in order to acquire three existing average schedule exchanges from Sioux Valley.

If, for any reason, the Bureau deems a waiver of the Section 69.605(c) definition of "average schedule company" to be necessary with respect to the proposed Hills-Sioux Valley transaction, the Jordan-Soldier Valley Telephone Company and Alpine Communications, L.C., CC Docket No. 96-45, DA 00-2473 (Acc. Pol. Div., released Nov. 3, 2000), order lists the three broad categories of special circumstances that justify such waivers. These categories are: (1) the Bureau has granted limited opportunities for carriers serving 5,000 or fewer access lines to convert from cost-based to average schedule settlements when faced with industry-wide changed circumstances; (2) the Bureau has granted waivers to certain small carriers that lacked the resources to operate on a cost-study basis; and (3) the Bureau has granted waivers to average schedule companies that have acquired another company in order to ensure a smooth settlement process. Id., at par. 13.

The proposed Hills-Sioux Valley transaction fits well within these parameters. First, Hills has a total of 2,754 access lines in its existing Minnesota and Iowa study areas, and is acquiring an additional 557 access lines from Sioux Valley. Hence, Hills will have only 3,311 access lines after completion of the proposed exchange acquisition and would therefore be eligible, as a carrier "serving 5,000 or fewer access lines," to convert from cost to average schedule status if it were not already an average schedule company. Second, Hills is one of the "small carriers that lack[] the resources to operate on a cost-study basis" that the Commission has permitted to operate on an average schedule basis. Whether Hills serves 2,754 access lines (as it does at the present time) or 3,311 access lines (as it will after it acquires the three average schedule exchanges from Sioux Valley), it is and will continue to be a small carrier that lacks the resources to operate on a cost-study basis. Third, given that Hills presently operates on an average schedule basis and that it is acquiring three exchanges that Sioux Valley has been operating on an average schedule basis, allowing Hills to continue to operate the three exchanges on an average schedule basis will ensure a smooth settlement process.

In their April 5, 2004 joint petition for study area waiver, Hills and Sioux Valley demonstrated that their proposed exchange transaction will serve the public interest. Whereas both Hills and Sioux Valley are established local exchange carriers with proven records of providing high-quality telecommunications facilities and services to their rural customers, the Valley Springs, East Valley Springs and North Larchwood exchanges are closer to the existing service areas of Hills than of Sioux Valley, and fit much better into the future operating and expansion plans of Hills than of Sioux Valley. The proposed transaction will provide the subscribers of the three exchanges with an operator that is interested in furnishing them with high quality services on a long-run basis, and that will do so in an effective and efficient manner.

If Hills were required to convert the Valley Springs, East Valley Springs and North Larchwood exchanges from average schedule to cost settlements, it would have to spend substantial amounts of time, effort and dollars on cost studies that it otherwise would be able to use to serve the affected 557 access lines and their subscribers.

Finally, the proposed average schedule waiver will not result in adverse effects on interstate revenue requirements, or in administrative burdens on the Commission or the National Exchange Carrier Association ("NECA"). The three exchanges and their 557 access lines will continue to be operated on an average schedule basis, and receive interstate access settlements according to Commission-approved average schedule formulas. The only difference will be that they will receive settlements as part of a new 557-access line Hills South Dakota study area rather than as part of the present 5,912-access line Sioux Valley South Dakota study area.

Conclusion

Hills is an existing and established average schedule company, and should be permitted to acquire the three small average schedule exchanges from Sioux Valley without a Section 69.605(c) waiver in the same manner that the similarly situated Winnebago and Farmers were permitted to acquire additional exchanges without average schedule waivers. If, for any reason, the Bureau determines that a waiver of Section 69.605(c) is required to complete the proposed transaction, it should grant such waiver under any or all of the three standards listed in the Jordan-Soldier Valley Telephone Company order. Grant of such waiver will serve the public interest, and will not adversely affect interstate revenue requirements or increase the administrative burdens of the Commission or NECA.

Respectfully submitted,
SIOUX VALLEY TELEPHONE COMPANY
and
HILLS TELEPHONE COMPANY, INC.

By______________________________
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